

United States
Department of the Interior
Bureau of Land Management

Miles City Field Office

Barnett Geotech
Borings MTM-105450
Land Use Permit
Categorical Exclusion (CX)
DOI-BLM-MT-C020-2013-0092-CX

For Further Information Please Contact:

Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301
406-233-2800

BLM



UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

CATEGORICAL EXCLUSION REVIEW AND APPROVAL

A. Background

BLM Office: Miles City Field Office

Serial No.: MTM-105450

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0092-CX

Proposed Action Title/Type:

Barnett Geotechnical Borings Land Use Permit MTM-105450

Location of Proposed Action:

T. 11 N., R. 56 E., Section 33: SE $\frac{1}{4}$, Fallon County, Montana, PMM (4 holes)

T. 25 N., R. 43 E., Section 7: W $\frac{1}{2}$ E $\frac{1}{2}$, McCone County, Montana, PMM (1 hole)

Description of Proposed Action: The proposed action is to issue a land use permit MTM-105450 to Sandra Barnett for five geotechnical borings and the roads to the sites. This permit would be located on two parcels of Federal land. Each borehole site would be 100 feet long, 100 feet wide, and consist of 0.23 acres, more or less. There is one borehole at the West Fork Hungry Creek Site in McCone County. The road into the site would be 20 feet wide, 3,829 feet long, and consist of 1.76 acres, more or less. The total for this site would be 1.99 acres, more or less.

The Cabin Creek Site in Fallon County has four borehole sites and roads to each site. Each borehole site would be 100 feet wide, 100 feet long, and consist of 0.23 acres, more or less. The four sites would be 0.92 acres, more or less. The roads to these sites would be 20 feet wide, 3,981 feet long, and consist of 1.83 acres, more or less. The total for this site is 2.75 acres, more or less. Total for the entire project would be 4.74 acres, more or less.

The purpose of the borings would be to gather data to aid in the design and construction of the proposed Keystone XL Pipeline. The outside diameter of the borehole would be approximately 8.5 inches. Boreholes would be backfilled with bentonite grout immediately upon completion of the boring. The majority of the drilling cuts would be returned into the borehole. The rest would be spread out near the immediate vicinity of the borehole. There would be one drill rig used. The drill rig would be either a truck mounted or tract/ATV type. There would be one support pickup carrying water to the onsite. Two additional vehicles may be onsite with land agents and field supervisors.

The holder has paid the required processing fee of \$773 for a Category 3 FLPMA permit.

The standard stipulations for cultural and/or paleontological resource protection and toxic substances would be made a part of the permit, as would the standard stipulations that all activities associated with the ROW and weed control would be conducted within the authorized limits of the permit. There would be no construction or routine maintenance when the soils are too wet. The holder would be required to contact entities or persons who hold an authorized right on adjacent or affected lands. The permit would be subject to mitigations set forth in the application and plan of development. The permit would be authorized pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800/2920 and the attached stipulations. The permit would be monitored for use and before future renewal or termination.

B. Land Use Plan Conformance

Land Use Plan Name: Big Dry R. A. RMP/EIS Record of Decision (ROD)

Date Approved/Amended: Approved on April of 1996

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): This proposed action is in conformance with the Big Dry Resource Area RMP/EIS ROD which was approved in April of 1996. On page 10 of the Record of Decision, it states that "In areas where rights-of-way are allowed, stipulations from the BLM Manual 2800 will be used to protect resource values." The proposed action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5

C. Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9E (19) for the issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, construction sites where the proposal included rehabilitation to restore the land to its natural or original condition.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and, as documented below, none of the extraordinary circumstances described in 516 DM2 apply.

Extraordinary Circumstances		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	No X	Rationale: <i>The project would not have significant impacts on public health and safety as it is for land use permit. DDL 2/21/2013</i>
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Yes	No X	Rationale: <i>Impacts would not be significant as the proposed action is for five boreholes and the roads to the sites. DDL 2/21/2013</i>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		
Yes	No X	Rationale: <i>No controversial environmental effects or unresolved conflicts. DDL 2/21/2013</i>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Yes	No X	Rationale: <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. DDL 2/21/2013</i>
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		
Yes	No X	Rationale: <i>This action is providing five geotechnical borings to gather soil information for the Keystone XL Pipeline, but this action will not establish a precedent for the future action or represent a decision in principal about the Keystone XL Pipeline. This is a separate action and approval of it does not mean approval for the pipeline. DDL 2/21/2013</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	No X	Rationale: <i>There would be no cumulative impacts from this project. See CFR 1508.7. DDL 2/21/2013</i>
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		

Yes	No X	<p>Rationale: <i>Confirm that cultural surveys have been completed; the appropriate data bases have been reviewed; and appropriate concurrence from SHPO and tribes have been received indicating that significant impacts are not expected.</i></p> <p>The proposed borehole locations and associated access routes were examined for cultural resources in May 2013. No cultural resources were located in either the West Fork Hungry Creek or Cabin Creek Location (See BLM Cultural Resources Report MT-020-13-99). The proposed project would have no effect to cultural properties listed on or eligible for listing on the National Register of Historic Places.</p> <p>DM 06/04/13</p>
<p>8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.</p>		
Yes	No X	<p>Rationale: Threatened or endangered species habitat does not exist within this area. BJB 3/6/13</p>
<p>9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.</p>		
Yes	No X	<p>Rationale: <i>No laws are being violated by this action. DDL 2/21/2013</i></p>
<p>10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).</p>		
Yes	No X	<p>Rationale: <i>Does not have a disproportionately high and adverse effect on low income or minority populations. DDL 2/21/2013</i></p>
<p>11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).</p>		
Yes	No X	<p>Rationale: <i>Consultation with tribes regarding Indian sacred sites must take place</i></p> <p>The proposed project would not limit access or use of public lands. No sites are located near the proposed action. A review of the Ethnographic Overview for Southeast Montana and Tribal Studies for the Keystone XL Pipeline do not reveal any areas of concern in either location.</p> <p>DM 06/04/13</p>

12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

Yes	No X	Rationale: <i>The proposed action will not contribute to the introduction or spread of noxious weeds as an existing right-of-way is being renewed.</i> DDL 2/21/2013
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7/8/2013

Signature of Environmental Coordinator

Date

Decision Record for Categorical Exclusion
Land Use Permit MTM-105450 Sandra Barnett
DOI-BLM-MT-020-2013-0092-CX

Decision: I have made the decision to issue a land use permit MTM-105450 to Sandra Barnett for five boreholes located on the following Federal lands (Public Domain):

T. 11 N., R. 56 E., Section 33: SE¼, Fallon County, Montana, PMM (4 holes) and
T. 25 N., R. 43 E., Section 7: W½E½, McCone County, Montana, PMM (1 hole).

The standard stipulations for cultural and/or paleontological resource protection, toxic substances stipulation, weed control stipulation, no construction or maintenance when too wet, coordinate with other parties, as well as other stipulations will be made part of the land use permit. The land use permit will be renewed for three years and be pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and be subject to all applicable provisions of the regulations at 43 CFR 2800/2920 and the attached stipulations. The applicant will be subject to cost recovery fees and rental fees. The land use permit will be monitored for use and before future renewal or termination.

Rationale for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (19) for the issuance of short-term (3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, construction sites where the proposal included rehabilitation to restore the land to its natural or original condition and none of the exceptions in 516 DM 2 apply. Further the actions are in conformance with the Big Dry RMP/EIS ROD, which was approved in April of 1996. I considered the proposed action and associated stipulations which will be included in the land use permit and are attached below. There is no potential for significant impacts. Use of this CX is appropriate and I have decided to implement this action.

D: Signature



Signature of Authorizing Official

7/9/2013

Date

Name: Acting for Todd D. Yeager.

Title: Field Manager.

Contact Person

For additional information concerning this CX review and decision, contact:
Dalice Landers, Realty Specialist (406-233-2836)
BLM – Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

Administrative Review or Appeal Opportunities

A BLM decision to issue a ROW may be appealed under regulations in 43 CFR 2801.10 in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the “full force and effect” of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the Miles City Field Office at 111 Garryowen Road, Miles City, Montana 59301 within 30 days from receipt of the decision issuing the decision. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2881.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the Miles City Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Stipulations

1. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
2. The holder shall be responsible for weed control on disturbed areas within the limits of the permit. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).
3. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of four (4) inches deep, the soil shall be deemed too wet to adequately support construction equipment.
4. The holder shall conduct all activities associated with the construction, operation, and termination of the permit within the authorized limits of the permit.
5. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
6. This grant is issued subject to the holder's compliance with the mitigations set forth in the application/plan of development.
7. The holder shall coordinate with the existing right-of-way holders, grazing lessees/permittees, and other parties who hold an authorized right on adjacent and affected lands.

8. The holder of this permit or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.

9. The holder shall seed all disturbed areas with the seed mixture listed below. The seed mixture shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s) and within six months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer.

Seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area. (Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder shall take appropriate measures to insure this does not occur.) Where drilling is not possible, seed shall be broadcast and the area shall be raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by the authorized officer. Evaluation of growth will not be made before completion of the second growing season after seeding. The authorized officer is to be notified a minimum of seven (7) days prior to seeding of the project.

Seed Mixture - Western wheatgrass must be included in the mix. Thickspike wheatgrass may be substituted only when western wheatgrass is unavailable. The combination for the seed mixture must include at least four of the following species including Western wheatgrass:

<i>Species of Seed</i>	<i>(Variety)</i>	<i>Common Name</i>	<i>Pounds/acre *(PLS)</i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00
<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00
<u>Schizachyrium scoparium</u>		Little bluestem	2.00

**Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS.*